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No. 97-501

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

RANDALL RICCI,

Petitioner,

VS.

VILLAGE OF ARLINGTON HEIGHTS,

Respondent.

On Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

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BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers (the "NACDL") is a professional bar association founded in 1958 to advance the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of a crime or other misconduct. Today, the NACDL has almost 10,000 direct members and 80 affiliates representing another 28,000 members, which include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges. The NACDL has members in all fifty states, and the American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

[1] Both parties have consented to the filing of this brief. Counsel for the NACDL authored this amicus brief in whole, and no parties other than those listed in Supreme Court Rule 37.6 made a monetary contribution to the preparation or submission of the brief.

Among the NACDL's objectives is to deter overreaching conduct by law enforcement officers by vigorously defending the protections guaranteed by the Constitution. The NACDL believes that this case may have a significant impact on determining the scope of the Fourth Amendment's prohibition against unreasonable seizures. Therefore, the NACDL presents this brief in support of the Petitioner to urge this Court not to permit routine custodial arrests for ordinance violations punishable only by fine.

SUMMARY OF ARGUMENT

The Fourth Amendment's prohibition against unreasonable searches and seizures should be held to prohibit custodial arrests for fine-only offenses not involving a breach of the peace or presenting a danger to the public health or safety. Petitioner Ricci's arrest would violate this rule. The business licensing ordinance that Ricci was arrested for violating is barely a criminal provision at all. For virtually all purposes except the law of arrest, Illinois law treats it as a civil provision. According to available evidence, the common law as of 1789, when the Bill of Rights was adopted, did not allow arrests for alleged violations of such ordinances.

Furthermore, a balancing of the interests at stake does not justify a custodial arrest in this circumstance. This Court always has recognized that an arrest is a very serious deprivation of liberty. In comparison, the fact that Respondent Village of Arlington Heights has limited the penalty to fines expresses the comparatively minimal importance it places on preventing or punishing violations. Moreover, the two governmental interests that Arlington Heights has asserted — to coerce compliance with the ordinance, and to bring an alleged offender before a magistrate — do not require an arrest. A citation, coupled with the threat of $500-a-day fines, would be at least as effective in persuading an out-of-compliance business to obtain a license. Furthermore, in almost every case, a

summons would be equally effective in bringing the operator of such a business before a court.

At the least, the Court should interpose a neutral and detached magistrate between the police and alleged offenders, by requiring a warrant before an officer may arrest under such an ordinance.

ARGUMENT

I. THE FOURTH AMENDMENT'S REASONABLENESS CLAUSE SHOULD BE HELD TO FORBID FULL CUSTODY ARRESTS FOR VIOLATIONS OF FINE-ONLY ORDINANCES NOT INVOLVING A BREACH OF THE PEACE OR A THREAT TO PUBLIC HEALTH OR SAFETY.

A. In the Framers' Time, the Common Law Prohibited Arrests for Minor, Summary Offenses.

"The Fourth Amendment to the Constitution protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'"[2] *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). In determining the content of this open-ended provision, the Court typically has begun by looking to "the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing." *Id.* (citing *California v. Hodari D.*, 499 U.S. 621, 624 (1991);

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[2] The Fourth Amendment applies to the states through the Fourteenth Amendment. *See, e.g., Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); *Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961).

United States v. Watson, 423 U.S. 411, 418-20 (1976); *Carroll v. United States*, 267 U.S. 132, 149 (1925)).

The available evidence shows that at the time of the framing, the common law did not allow arrests for offenses similar to the Arlington Heights licensing ordinance. Operating a business without a license is similar to a summary offense, which at common law was tried without a jury before a magistrate. Summary offenses included violations of laws regulating the highways, the Sabbath, liquor, and trade. Floyd Feeney, *The Police and Pretrial Release* 12 (1982); Julius Goebel Jr. & T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure (1664-1776)* 418 n.186 (1944).

> For offenses merely arising by penal statutes, and not connected with any breach of the peace, a justice has no authority, as necessarily incident to the cognizance of the offence; to apprehend the accused in the first instance, or even after a summons and a default, but can only summon him to attend, and in default of his appearance proceed *ex parte*.

W. Paley, *The Law and Practice of Summary Convictions on Penal Statutes by Justices of the Peace* 19 (London, 1814).[3] Parliament empowered magistrates to issue warrants only "in a variety of cases where there may be reason to apprehend, from the nature of the offence, or the probable description of the offender, that the object of the prosecution would be defeated by giving him notice." *Id.* at 19-20.

[3] Further, misdemeanor arrests were permitted only when there was a breach of the peace. Edward C. Fisher, *Laws of Arrest* 181 (Robert L. Donigan, ed. 1967).

In cases where there was no need to issue a warrant, the common law treated summary offenses much like civil violations, with the magistrate merely requesting that the allegedly offending party appear. *Id.* at 20. If the party did not appear, the magistrate typically could not force an appearance but would simply enter a default judgment. *Id.*[4]

There is little doubt that fine-only municipal ordinances such as the Arlington Heights ordinance at issue here come within these common law rules. Ordinance violations such as this are typically treated only as civil or quasi-criminal offenses, especially when imprisonment is not authorized. Wayne R. LaFave & Austin W. Scott, Jr., *Criminal Law* § 1.7(c) (2d ed. 1986). Consistent with this principle, Illinois law does not classify the Arlington Heights licensing ordinance as a misdemeanor, or, in most important respects, as a criminal provision at all.

[4] Police departments organized along modern lines first appeared in about the mid-1800s, and certain rules regarding arrests for minor offenses then began to change. Feeney, *supra*, at 13. Legislatures conferred on the new police forces broader powers, including the power to make warrantless arrests for misdemeanors and some ordinance violations. *Id. See also* Horace L. Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. (part 1) 541, 577 & (part 2) 673, 705-09 (1924). However, even these broader powers were limited. Many states permitted non-felony offenders to be arrested only if the offense was committed in the officer's presence. Fisher, *supra*, at 180-81. Even today, some states confine this power to misdemeanors committed in an officer's presence and involving a breach of the peace or to more serious misdemeanors. *See, e.g.*, Ind. Code Ann. § 35-33-1-1 (West, WESTLAW through End 1997 1st Sp. Sess.); Mass. Gen Laws Ann. ch. 276, § 28 (West, WESTLAW through 1st Sess. 1997). Under such rules, the arrest of Petitioner Ricci would have been unauthorized. It was for a non-serious offense that did not involve a breach of the peace and that also possibly was not committed in an officer's presence, as the officer evidently did not witness Ricci actually conducting any business.

Illinois municipalities may enact ordinances punishable by fine or non-incarceration penalty only, as well as certain minor misdemeanors, 65 Ill. Comp. Stats. 5/ 1-2-1 & 5/1-2-1.1 (West, WESTLAW through P.A. 90-925 approved 8/14/97). However, fine-only ordinance offenses do not qualify as misdemeanors. *City of Peoria v. Toft*, 574 N.E.2d 1334, 1336 (Ill. App. Ct. 1991); *Village of Mundelein v. Hartnett*, 454 N.E.2d 29, 32 (Ill. App. Ct. 1983). Indeed, Illinois law allows a violation of such an ordinance to be proven only by a clear preponderance of the evidence, *City of Chicago v. Joyce*, 232 N.E.2d 289, 291 (Ill. 1967), rather than by the constitutionally required criminal standard of beyond a reasonable doubt, *see Jackson v. Virginia*, 443 U.S. 307, 317-18 (1979); *In re Winship*, 397 U.S. 358, 364 (1970). Prosecuting municipalities are also allowed to appeal judgments of acquittal, despite the United States and Illinois Constitutions' proscriptions against double jeopardy. *Town of Normal v. Bowsky*, 492 N.E.2d 204, 205 (Ill. App. Ct. 1986). And the 160-day period within which Illinois requires criminals to be tried does not apply. *City of Chicago v. Wisniewski*, 295 N.E.2d 453, 454 (Ill. 1973). In fact, if enforcement of the ordinance violation is instituted by a summons rather than an arrest, the Illinois catch-all five-year statute of limitations for civil actions applies. *Toft*, 574 N.E.2d at 1336 (allowing action to recover parking fines over three years after ticketing). As the Illinois Supreme Court has explained, "the recovery of a fine for an ordinance violation has been historically treated in Illinois as a civil action to recover a debt." *People v. Datacom Sys. Corp.*, 585 N.E.2d 51, 60 (Ill. 1991).

Thus, the common law at the time of framing would not have allowed Petitioner Ricci's arrest for violation of the Arlington Heights licensing ordinance.

B. Full-Custody Arrests for Violations of the Licensing Ordinance Are Unreasonable Under the Court's Balancing Test.

1. No Important Public Interest Justifies Full Custody Arrests for Fine-Only Municipal Ordinances Not Involving a Breach of the Peace or Threat to Public Health or Safety.

In addition to looking to the common law, this Court's decisions have employed a balancing test to measure police practices against the requirements of the Fourth Amendment reasonableness clause. *See, e.g., Maryland v. Wilson*, 117 S. Ct. 882, 885-86 (1997); *United States v. Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979); *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977); *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968); *Camara*, 387 U.S. at 534-35.

This balancing test asks, ultimately, whether a sufficiently weighty public interest outweighs the private interest at stake in privacy, freedom or bodily integrity. The more intrusive the police practice, the more compelling the necessary justification must be. Consequently, analysis typically begins with examination of the private interest. *E.g., Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616-18 (1989).

A custodial arrest is an extremely intrusive and humiliating procedure. As one commentator has summarized:

> One arrested is no longer free to walk away, but also is suddenly in the control of another human being.

If he resists, force will be used. A person who is arrested can no longer choose when he eats, with whom he associates, where or whether he will sit or stand, or even if he may go to the bathroom.

. . . A person arrested is booked; a record is made of the arrest, usually including fingerprints and sometimes photographs. The record may be permanent, whether or not the individual is ultimately convicted of the offense for which he or she is charged. The arrestee will certainly be searched. Although the search may be limited to a frisk, it is nonetheless more than a mere "petty indignity" as "the officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin . . ., and entire surface of the legs down to the feet."

Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 62 Temp. L. Rev. 221, 264 (1989) (citations omitted) (quoting *Terry*, 392 U.S. at 17 & 17 n.13). Although Ricci's custodial arrest and subsequent detention lasted only about an hour — because of his wife's ability to secure his release by obtaining a business license — not every arrestee may be so fortunate. A person arrested without a warrant who is unable to post bond may remain in police custody as long as 48 hours before being presented to a magistrate. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).[5]

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[5] Also, with carte blanche powers to arrest, law enforcement officers would have broad power to use arrests for minor ordinance violations as a pretext (continued...)

No interest of Arlington Heights justifies this intrusion for suspected violations of the licensing ordinance. In the Court of Appeals, Arlington Heights asserted two interests, neither of them sufficient. First, it said that arrests may coerce compliance with the licensing requirement, as, indeed, happened here. Second, Arlington Heights asserted that arresting an alleged violator allows the police to bring the person before a magistrate to set bond. In this way, arrests help assure the alleged violator's appearance in court.

To begin with, the weight of these interests is not very great when the offense involves a quasi-criminal provision, punishable only by fine. As this Court stated in *Welsh v. Wisconsin*, 466 U.S. 740, 754 n.14 (1984):

> Given that the classification of state crimes differs widely among the States, the penalty that may attach to any particular offense seems to provide the clearest and most consistent indication of the State's interest in arresting individuals suspected of committing that offense.

Because Arlington Heights has determined that incarceration would be disproportionate as a penalty for violations of the licensing ordinance, it is inconsistent to assert that incarceration is justified prior to adjudication. *See Williams v. Illinois*, 399 U.S. 235, 243-45 (1970) (failure to pay fine may not increase period of incarceration

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[5](...continued)
to conduct a full custodial search. *See* 3 Wayne R. LaFave, *Search and Seizure* § 5.2(e), at 85-86 (1996); *United States v. Robinson*, 414 U.S. 218, 248 (1973) (Marshall, J., dissenting) ("There is always the possibility that a police officer, lacking probable cause to obtain a search warrant, will use a traffic arrest as a pretext to conduct a search.").

beyond crime's maximum sentence). *Cf. Bearden v. Georgia*, 461 U.S. 660, 667-69 (1983); *Tate v. Short*, 401 U.S. 395, 398-99 (1971).

Moreover, arrests are patently unnecessary to protect the interests that Arlington Heights asserts. A citation, coupled with the credible threat of $500-a-day fines, would be at least as coercive. And it is fanciful to suggest that arrests are even presumptively necessary to bring operators of on-going businesses before a court for violations of the licensing ordinance. Arrests are no more necessary in such cases than in run-of-the-mill civil cases. Surely a citation or summons would be equally effective to secure the operator's presence.[6]

Although the Court has not yet decided this question, it long has been observed that custodial arrests are inappropriate for violations such as this. As Justice Stewart stated a quarter century ago: "It seems to me that a persuasive claim might have been made . . . that the custodial arrest of the petitioner for a minor traffic offense violated his rights under the Fourth and Fourteenth Amendments." *Gustafson v. Florida*, 414 U.S. 260, 266-67 (1973) (Stewart, J., concurring). Professor LaFave likewise has written that "the proposition that the fourth amendment should be construed to bar custodial arrests for minor violations is an appealing one." Wayne R. LaFave, *Controlling Discretion by Administrative Regulations: The Use, Misuse, and Nonuse of Police Rules and Policies in Fourth Amendment Adjudication*, 89 Mich. L. Rev. 442, 487-88 (1990). *See also State v. Harmon*, 910 P.2d 1196, 1204 (Utah 1995) ("'It should be the policy of every law enforcement

[6] Moreover, by routinely dismissing prosecutions once the business obtains a license, Arlington Heights has made clear that it is satisfied by the cessation of unlicensed business operations Thus, flight itself could satisfy Arlington Heights's interests.

agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law.'") (quoting 2 Wayne R. LaFave, *Search and Seizure* § 5.1(h) at 432 (1987)); *Barnett v. United States*, 525 A.2d 197, 199 (D.C. 1987) (arresting for fine-only pedestrian walking offence violated arrestee's Fourth Amendment rights).

Prohibiting custodial arrests for these civil or quasi-criminal wrongs would also be consistent with a number of lower court decisions that the Fourth Amendment prohibits custodial arrests of material witnesses or civil defendants when the purpose of the arrest can be accomplished in a less intrusive way. *See, e.g., United States v. Ward*, 488 F.2d 162, 170 (9th Cir. 1973) (stopping car to interview witness was unreasonable; agents could have "sought an interview with the appellant at either his home or place of business"); *Bacon v. United States*, 449 F.2d 933, 943 (9th Cir. 1971) (material witness may be arrested only if his presence cannot be secured by subpoena); *State v. Klinker*, 537 P.2d 268, 278 (Wash. 1975) (en banc) (arrest in civil filiation proceeding unreasonable, where summons and complaint procedure would be effective). Professor LaFave concluded from such decisions that "it is not fanciful to suggest that persons suspected of relatively minor criminal violations should also be so protected." Wayne R. LaFave, *"Seizures" Typology: Classifying Detentions of the Person to Resolve Warrant, Grounds, and Search Issues*, 17 U. Mich. J.L. Reform 409, 440 (1984).

2. This Court's Decision in *Whren v. United States* Does Not Preclude Use of the Balancing Test.

The Court of Appeals believed that this Court's decision in *Whren v. United States*, 116 S. Ct. 1769 (1996), precluded "a balancing analysis." *Ricci v. Arlington Heights*, 116 F.3d 288, 291

(7th Cir. 1997). According to that court, probable cause that the ordinance had been violated made balancing unnecessary, but the court was mistaken.

Whren did not present the issue that is now before the Court. In that case, the Court held that probable cause of traffic violations, without more, justified a *stop* of the vehicle under the Fourth Amendment reasonableness clause. There was no issue in *Whren* of whether the traffic violations would have allowed an arrest, and nothing in the Court's opinion suggested they would. A plain-clothes officer approaching the car immediately observed what appeared to be crack cocaine, and arrested the driver and passenger for drug offenses, not the traffic violations. 116 S. Ct. at 1772.

Because of the ubiquity of minor traffic regulations and asserted impossibility of driving without violating one, the petitioners in *Whren* urged the Court to fashion a new rule restricting or regulating officers' ability to stop vehicles in order to reduce the possibility of pretextual stops. The *Whren* petitioners argued that a balancing test supported creation of such a rule. The Court rejected the argument, stating:

> Where probable cause has existed, the only cases in which we have found it necessary actually to perform the "balancing" analysis involved searches or seizures conducted in an extraordinary manner .... The making of a traffic stop out-of-uniform does not remotely qualify as such an extreme practice, and so is governed by the usual rule that probable cause to believe the law has been broken "outbalances" the private interest in avoiding police contact.
>
> ....

> For the run-of-the-mine case, which this surely is, we think there is no realistic alternative to the traditional common-law rule that probable cause justifies a search and seizure.

Id. at 1776-77.

Here, an arrest on the basis of the Arlington Heights licensing ordinance *is* extraordinary. That ordinance, if it is a criminal provision at all, is barely one. It seems criminal only in the sense that Illinois law allows arrests upon probable cause to believe that it has been violated. *People v. Edge*, 94 N.E.2d 359, 363 (Ill. 1950) (authorizing arrest).[7] Once the arrestee has been brought before the court, however, the "criminal" attributes of the ordinance virtually disappear. From that point forward, procedures, including the burden of proof, are essentially similar to those in civil cases. Moreover, Petitioner here is not seeking to displace a common law rule. On the contrary, in this case — unlike *Whren* — traditional common law principles and the Fourth Amendment balancing test both produce the same result, namely that custodial arrests for violations of this licensing ordinance should not be allowed.

3. The Proposed Rule Is Consistent with Normal Law Enforcement Practices.

Precluding arrests under these circumstances will not impede any legitimate and useful law enforcement practice. It certainly will not call into question the long-established practice of law enforcement *stops* for traffic violations, even when such

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[7] The *Edge* court explained, however, that "an action for a violation of a municipal ordinance is both tried and reviewed as a civil proceeding." 94 N.E.2d at 363.

violations are punished only by fines. Unlike an arrest, a stop is necessary for an officer to issue a citation (or warning). Moreover, the line between stops and arrests is a familiar one. Numerous cases recognize the difference between traffic stops and other stops short of arrest, on the one hand, and custodial arrests, on the other; several decisions of this Court turn on the distinction. *See, e.g.*, *United States v. Hensley*, 469 U.S. 221 (1985) (investigatory stop upheld on reasonable suspicion short of probable cause); *Berkemer v. McCarty*, 468 U.S. 420 (1984) (roadside questioning during traffic stop did not require warnings that are necessary upon arrest).

Forbidding arrests for fine-only offenses, not involving breach of the peace or a threat to public health or safety, also will not impede enforcement of so-called "quality of life" laws. A recent, and well publicized, law enforcement strategy requires active enforcement of such prohibitions. *See, e.g.*, William Bratton, *Turnaround: How America's Top Cop Reversed the Crime Epidemic* (1998); John Leo, *You might Even Want to Live There*, Newsweek, Nov. 4, 1996, at 19. Implementing this strategy, former New York City Police Commissioner William Bratton directed Transit Authority officers to target subway turnstile jumpers for arrest. Bratton, *supra*, at 152-56. The rule we propose would not hinder this strategy. New York law classifies fare evasion as a Class A misdemeanor, punishable by a year in jail and $1,000 fine. N.Y. Penal Law §§ 70.15, 80.05, 165.15 (McKinney 1988, 1998 & Supp. 1998); *People v. Anderson*, 489 N.Y.S.2d 486, 486-67 (N.Y. App. Div. 1985). Other significant "quality of life" prohibitions likely carry similar penalties, and several such offenses involve a breach of peace or a risk to public health and safety, *e.g.*, prohibitions against public urination or defecation. The common

law permitted arrests for such offenses, and for them, the outcome of the balancing test will likely be different.[8]

II. AT THE LEAST, THE COURT SHOULD REQUIRE A WARRANT FOR CUSTODIAL ARRESTS IN THESE CIRCUMSTANCES.

At the least, a warrant should be required before an arrest for violation of a fine-only ordinance, not involving a breach of the peace or threat to the public health or safety. In view of the interests at stake on both sides, a neutral magistrate should determine whether there is probable cause, and should at least have the opportunity to consider whether an arrest warrant, rather than a summons, is necessary.

In numerous decisions, this Court has explained and enforced the Fourth Amendment's preference for warrants for both searches *and seizures*. *Beck v. Ohio*, 379 U.S. 89, 96 (1964); *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1962); *Terry*, 392 U.S. at 20 (1968); *Davis v. Mississippi*, 394 U.S. 721, 728 (1969). The warrant requirement serves as a "checkpoint" between the government and the public, where a neutral and detached magistrate is able to weigh the strength of the government's evidence against the liberty interest that the government's contemplated action will

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[8] It also should be mentioned that nothing in the rule we propose will undercut an apparent trend toward requiring arrests in cases of domestic violence. At least 15 states and the District of Columbia have enacted mandatory arrest laws in such cases. Marion Wanless, Note, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. Ill. L. Rev. 533, 538. Congress also passed the Violence Against Women Act, which provides funds to states that implement mandatory arrest programs. *Id.* at 543. But the offenses targeted by the such laws are at least misdemeanor crimes, not fine-only ordinance violations. Moreover, these offenses involve obvious threats to public safety.

invade. *Steagald v. United States*, 451 U.S. 204, 212-13 (1981); *see also Johnson v. United States*, 333 U.S. 11, 14 (1948). However, the Court's preference for arrest warrants is not as strong when there are circumstances of special need, such as when the police have probable cause to believe that the person to be arrested has committed a felony or when the police have reason to believe that the suspect is dangerous. *Watson*, 423 U.S. at 419-20 (warrantless arrest of felon in public place); *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1996) (warrantless entry into home to arrest actual murderer possibly justified) (dicta).

Alleged violations of fine-only ordinances, such as the Arlington Heights licensing ordinance, simply present no need to dispense with a warrant. The Village has expressed its low concern about violations, by choosing to punish them only with fines. *Cf. State v. Nelson*, 914 P.2d 97, 100 n.14 (Wash. Ct. App.), *review denied*, 922 P.2d 99 (Wash. 1996) (by making misdemeanor offense punishable only by fine, state "said, in essence, that it had only a minimal punishment interest in conduct of that sort"). Moreover, as we explain above, for virtually every other purpose, Illinois law treats this ordinance as a civil, not criminal provision.

A bright-line rule requiring a warrant in these circumstances would be consistent with the concern the Court expressed in *Watson*, when it declined to require case-by-case assessments of the need to dispense with arrest warrants. 423 U.S. at 423-24. The Court explained that it did not want "to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like." *Id.* The police would have clear guidance from a categorical rule forbidding warrantless arrests for fine-only offenses not involving a breach of the peace or a threat to public health or safety.

CONCLUSION

The Court should find that custodial arrests are unreasonable under the Fourth Amendment, when made for alleged violations fine-only ordinances not involving a breach of the peace or threatening the public health or safety. At the least, the police should obtain a magistrate's authorization before arresting for such quasi-criminal offenses.

Respectfully submitted,

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